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EXAMINER
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CHANG, SUNRAY

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/763,786  
Filing Date: January 23, 2004  
Appellant(s): FISCHER ET AL.

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John P. Musone  
Reg. 44,961

For Appellant

This is in response to the appeal brief filed July 23<sup>rd</sup>, 2008 appealing from the Office action mailed May 28<sup>th</sup>, 2008.

*EXAMINER'S ANSWER*

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6282454	Papadopoulos et al.	8-2001
5103392	Mori	4-1992
7035898	Baker	4-2006

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papadopoulos et al. (USPN 6,282,454) in view of Mori et al. (USPN 5,103,392).

Regarding claim 1,

Papadopoulos et al. teaches,

- A process control system, [industrial control system, Col. 2, lines 33 – 36]
- operation running in the process control system [application program to display, Col. 4, lines 1 – 6; enables the data transfer between the application program and the user through the Internet, Col. 3, lines 48 – 60; Programmable logic controllers (PLCs) are widely used in industry and process control, Col. 2, lines 8 – 12; Using this interface, the user can retrieve all pertinent data regarding the operation of the PLC, including PLC configuration, I/O and register status, operating statistics, diagnostics, and distributed I/O configurations. Updates to operating software can also be downloaded through the Internet access, Col. 2, lines 58 – 63]

Papadopoulos et al. does not teach a processor adapted to determine a payment figure regarding the creation **or** removal of a process control function **or** regarding a user activity **or** regarding an execution of an automation function.

Mori teaches,

- a processor adapted to determine a payment figure regarding the creation **or** removal of a process control function **or** regarding a user activity **or** regarding an execution of an automation function. [a system for storing the history of use of marketable programs

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(software) such as marketable computer programs. By storage of the history of use, proprietors of marketable programs can charge for the exact amount of use of the software. Specifically, the system allows proprietors to obtain information on the exact state of use of software by a specific user and charge appropriately for that use, Col. 1, lines 14 – 23]

It would have been obvious to a person of ordinary skill in the art at the time of applicant's invention to modify the teaching of Papadopoulos et al. to include "a processor adapted to determine a payment figure regarding the creation **or** removal of a process control function **or** regarding a user activity **or** regarding an execution of an automation function", for the purpose of making the use of such software more attractive to users [Col. 1, lines 14 – 23].

Regarding claim 2,

Papadopoulos et al. teaches,

A process control system according to claim 1, further comprising:

- a process control computer; [industrial control system, Col. 2, lines 33 – 36; Fig. 1; further see Col. 3, lines 29 – 47]
- a client computer; [personal computer, Fig. 1; further see Col. 3, lines 29 – 47] and
- the Internet, [Internet, Fig. 1; Col. 2, lines 33 – 36] wherein
- at least a part of the operations running in the process control system run on the process control computer. [Programmable logic controllers (PLCs) are widely used in industry and process control, Col. 2, lines 8 – 12; Using this interface, the user can retrieve all pertinent data regarding the operation of the PLC, including PLC configuration, I/O and register status,

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operating statistics, diagnostics, and distributed I/O configurations. Updates to operating software can also be downloaded through the Internet access, Col. 2, lines 58 – 63; Fig. 1]

Regarding claim 3,

Papadopoulos et al. teaches,

- at least one field device for automation of at least one system component [PLC, application programs, a ladder program for controlling the I/O devices, Col. 4, lines 36 – 46] wherein
  - at least a part of the operations running in the process control system run on the field device.
- [the application programs, a ladder program for controlling the I/O devices, Col. 4, lines 36 – 46]

Regarding claims 4 and 8,

Papadopoulos et al. teaches,

A process control system according to claim 2, wherein

- the process control computer comprises a Web server [Web server module, Web site, Fig. 1 – 3; further see Col. 3, line 29 – Col. 4, line 35] and
- the client computer comprises an Internet browser [a personal computer (PC) 8 having a commercially available browser, Col. 3, lines 22 – 47] so that
- the client computer can influence the operations running in the process control computer [the browser 10 functions as a remote human-machine interface or HMI control of the process control system, Col. 4, lines 1 – 6] via the Internet, [Fig. 1] wherein

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- the operations can also include operations [application program, Col. 3, lines 48 – 60] by which further operations are initiated in further components of the process control system. [application programs includes a ladder logic program for controlling the I/O devices ... to send commands to the PLC and receive the response, Col. 4, lines 36 – 46]

Regarding claim 5,

Papadopoulos et al. teaches,

A process control system according to Claim 4, wherein the further components comprise

- field devices for monitoring and control of components of a technical system [PLC, application programs includes a ladder logic program for controlling the I/O devices ... to send commands to the PLC and receive the response, Col. 4, lines 36 – 46] that are connected by radio communication **and/or** by a fixed link to the process control computer, [Fig. 2, Fig. 3] wherein
- the further operations also comprise those operations that are executed in the field devices. [application programs includes a ladder logic program for controlling the I/O devices ... to send commands to the PLC and receive the response, Col. 4, lines 36 – 46]

Regarding claim 6

Papadopoulos et al. teaches,

A process control system according to claim 5, wherein

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- communication between the components of the process control system is based on the TCP/IP transmission protocol (TCP/IP) [TCP/IP network, Ethernet network, Col. 4, lines 36 – 46; see further see Abstract, Col. 5, lines 20 – 28].

Regarding claims 7 and 9 – 13,

Papadopoulos et al. teaches,

- A process control system [industrial control system, Col. 2, lines 33 – 36]  
Papadopoulos et al. does not teach the payment figure is a service fee to be paid by the user to an Application Service Provider.

Mori et al. teaches,

- the payment figure is a service fee to be paid by the user to an Application Service Provider.  
[use of software by a specific user and charge appropriately for that use, Col. 1, lines 20 – 21], for the purpose of making the use of such software more attractive to users [Col. 1, lines 14 – 23]

2. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Papadopoulos et al. in view of Mori et al., further in view of Baker et al. (USPN 7,035,898).

Regarding claim 14,

Papadopoulos et al. teaches,

- a process control system [industrial control system, Col. 2, lines 33 – 36]



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Papadopoulos et al. does not teach a method for determining a payment figure, providing a processor unit adapted to record the creation and/or removal of a process control function and an execution of an automation function; providing a device adapted to record a user activity; and determining a payment figure by the processor unit using recorded data of the preceding steps.

Mori et al. teaches,

- a method for determining a payment figure, [a system for storing the history of use of marketable programs (software) such as marketable computer programs. By storage of the history of use, proprietors of marketable programs can charge for the exact amount of use of the software. Specifically, the system allows proprietors to obtain information on the exact state of use of software by a specific user and charge appropriately for that use, Col. 1, lines 14 – 23]
  - providing a device adapted to record a user activity; [storage of the history of use, the system allows proprietors to obtain information on the exact state of use of software by a specific user, Col. 1, lines 14 – 23] and
  - determining a payment figure by the processor unit using recorded data of the preceding steps. [the system allows proprietors to obtain information on the exact state of use of software by a specific user and charge appropriately for that use, Col. 1, lines 14 – 23], for the purpose of making the use of such software more attractive to users [Col. 1, lines 14 – 23]
- Baker teaches
- providing a processor unit adapted to record the creation and/or removal of a process control function and an execution of an automation function; [The present invention allows a user at a remote location, using a browser, to create and edit a PLC operating program by adding and

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deleting various components illustrated in the mimic page; Rearranging the components on the mimic page will result in a different operating program. The program can be saved on the programming device 21 for later transfer to the PLC 32. Col. 6, lines 42 – 61], for a user at a remote location to edit the operating program of the PLC 32 by accessing a web page associated with the program package 33 via the Internet, Col. 6, lines 42 – 44]

It would have been obvious to a person of ordinary skill in the art at the time of applicant's invention to modify the teaching of Papadopoulos et al. to include "a method for determining a payment figure, providing a processor unit adapted to record the creation and/or removal of a process control function and an execution of an automation function; providing a device adapted to record a user activity; and determining a payment figure by the processor unit using recorded data of the preceding steps", for the purpose of making the use of such software more attractive to users [Mori et al., Col. 1, lines 14 – 23] and for a user at a remote location to edit the operating program of the PLC 32 by accessing a web page associated with the program package 33 via the Internet [Baker et al., Col. 6, lines 42 – 44].

#### **(10) Response to Argument**

[7A]. Regarding claim 1,

Appellants argue the combination of **Papadopoulos** reference and **Mori** reference fails to teach "a processor unit adapted to determine a payment figure" as described in pages 4 – 7 of the appeal brief.

First, the term, "determining payment figure", should not be read as "calculating payment" or "computing payment" only; a computer "provides history of use and charge

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appropriately for that use” which also can be used to “determine payment figure”, see specification (page 2, lines 20 – 30), “determining a payment figure ... to be paid by a customer, that depend on the actual use of the process control system”, which indicates the relationship between “payment figure” and “actual use”. Examiner’s interpretation is based on this disclosure.

**Mori** reference teaches “a system to store the history of use of programs ... charges can be based on actual use of the programs” (Abstract); “By storage of the history of use, proprietors of marketable programs can charge for the exact amount of use of the software. Specifically, the system allows proprietors to obtain information on the exact state of use of software by a specific user and charge appropriately for that use” (col. 1, lines 16 – 21); “provide a system in which the proprietor of a program can charge for the exact amount of use of his program” (col. 1, lines 56 – 58)...

The limitation, “a processor unit adapted to determine a payment figure from operations”, which is so broad that can also be read on different embodiments of **Mori** reference. For example, “information on the balance of the charge payable by the user stored in the use history storage 131 can be revised to raise the limit of the cumulative charges stored in the use history storage 131 by instructions supplied through the input/output processing portion 132 from the account portion 53 in the program pool station 5” (col. 4, lines 9 – 15), which indicates the cumulative charge can be determined to raise by instructions supplied through processing portion from account portion.

Regarding the phrase “adapted to” see MPEP 2106: Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular

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structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

- (A) statements of intended use or field of use,
- (B) “adapted to” or “adapted for” clauses,
- (C) “wherein” clauses, or
- (D) “whereby” clauses.

This list of examples is not intended to be exhaustive. See also MPEP § 2111.04.

USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

[7B]. Regarding claim 14,

Appellants again argue the combination of **Papadopoulos**, **Mori**, and **Baker** references fails to teach “a processor unit adapted to determine a payment figure” as described in pages 7 – 10 of the appeal brief. The examiner’s answer to this argument can be found above in the answer to argument (7A).

[7C(1)]. Regarding claim 2,

Appellants argue that none of the art of record teaches “a process control computer, a client computer and Internet and operations running in the process control system run on the process control computer”, which is not persuasive since the appellants only indicate the system

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is different with claimed system, the examiner can not see any further limitation to distinct the two systems.

[7C(2)]. Regarding claim 3,

Appellants argue that I/O device 40 of **Papadopoulos** reference is not field device, which the examiner does not see any further limitation to distinct the “field device” with the I/O device.

[7C(3) – (7)]. Regarding claims 4 – 13,

Appellants argue that “a combination of features including what is recited in claim 1 / claim 2, which combination is absent from the prior art. None of the art of record teaches or suggests this combination”. The examiner assumes applicants’ argument is regarding limitations in claims 1 or 2, which both have already been answered above.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Sunray R Chang/  
Examiner, Art Unit 2121

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Conferees:

/Albert DeCady/

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